

Court of Appeals, Division One
Civil Appeal

1 CA-CV 15-0194

FRANKLIN v. CLEMETT et al.

Appellate Case Information

Case Filed: 27-Mar-2015
Case Closed:

Dept/Composition

Department B

Hon. Patricia K Norris
Hon. Samuel A Thumma
Hon. Margaret H Downie

Side 1. MARK WILLIAM FRANKLIN, Plaintiff/Appellant

(Litigant Group) MARK WILLIAM FRANKLIN

- Mark William Franklin

Co-Counsel for: Plaintiff/Appellant

David L Abney, Esq. (AZ Bar No. 9001)
Joseph D'Aguanno, Esq. (AZ Bar No. 20421)
Frank I Powers, Esq. (AZ Bar No. 13369)
Karen L Lugosi, Esq. (AZ Bar No. 10987)

Side 2. JASON JOHN CLEMETT, et al., Defendant/Appellee

(Litigant Group) JASON JOHN CLEMETT

- Jason John Clemett

Attorneys for: Defendant/Appellee Clemett

William D Holm, Esq. (AZ Bar No. 7412)
Jonathan Paul Barnes, Jr., Esq. (AZ Bar No. 28014)

(Litigant Group) DANIEL BLANCHARD

- Daniel Blanchard

Attorneys for: Defendant/Appellee Blanchard

R Corey Hill, Esq. (AZ Bar No. 12188)
Ginette M Hill, Esq. (AZ Bar No. 18272)
Christopher Robbins, Esq. (AZ Bar No. 11064)

CASE STATUS

Nov 23, 2016....Pending in ASC

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2010-033437	Tort - Negligence; Assault and Battery; Negligent/Intentional Infliction of Emotional Distress		Dawn M Bergin, Authoring Judge of Order		

DESCENDENT CASE(S)

ASC CV-16-0282-PR

2 CASE DECISIONS

25-Oct-2016 MEMORANDUM DECISION

Patricia Norris.....Author
Samuel Thumma.....Concur
Margaret Downie.....Concur

Filed: 25-Oct-2016 Mandate:

Decision Disposition

Affirmed

25-Oct-2016 OPINION

Amended Per Order Of 10-25-16

Patricia Norris.....Author
Samuel Thumma.....Concur
Margaret Downie.....Concur

Filed: 25-Oct-2016 Mandate:

Decision Disposition

Affirmed

70 PROCEEDING ENTRIES

1. 27-Mar-2015 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 02/28/15

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2. 27-Mar-2015 FILED: e-Record on Appeal: Instruments/Minute Entries Exhibits - not sent at this time
3. 6-Apr-2015 FILED: Notice to Parties re: Appellant's Fee/Case Management Statement/Brief Due
4. 13-Apr-2015 FILED: Plaintiff's A.R.S. Sec. 12-1841 Notice of Claim of Unconstitutionality of A.R.S. Sec. 12-711; Certificate of Service for Plaintiff's A.R.S. Sec. 12-1841 Notice of Claim of Unconstitutionality of A.R.S. Sec. 12-711 (Appellant)
5. 13-Apr-2015 FILED: Motion for Oral Argument; Certificate of Service for Motion for Oral Argument (Appellant)
6. 13-Apr-2015 FILED: Motion to Extend Date for Opening Brief; Certificate of Service for Motion to Extend Date for Opening Brief (Appellant)
7. 17-Apr-2015 FILED: Notice of Association of Counsel of Record for Defendants-Appellees Blanchard; Certificate of Service for Notice of Association of Counsel of Record for Defendants-Appellees Blanchard
8. 20-Apr-2015 RECEIPT No.: 2015-00512 ; \$280.00, Authorization: #10004852635, Applied to: MARK WILLIAM FRANKLIN - Class A Filing Fee (\$280.00) Paid for: Knapp & Roberts PC - By Integrated Resource Systems IN
9. 20-Apr-2015 FILED: Notice of Association of Counsel; Certificate of Service (Appellee Clemett)
10. 20-Apr-2015 FILED: Notice of Paying Filing Fee; Certificate of Service (Appellee Clemett)
11. 20-Apr-2015 ORDERED: Motion to Extend Date for Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Friday, 06-05-2015 to Monday, 07-06-2015. Appellant is reminded that case management statement is due on 4/27/15. Melina Brill ProTem Judge - Author
12. 21-Apr-2015 RECEIPT No.: 2015-00522 ; \$140.00, Authorization: Ref1#10015874994, Applied to: DANIEL BLANCHARD - Class B Filing Fee (\$140.00) Paid for: DeCiancio Robbins PLC - By Intresys Inc
13. 23-Apr-2015 RECEIPT No.: 2015-00532 ; \$140.00, Authorization: 12018236065, Applied to: JASON JOHN CLEMETT - Class B Filing Fee (\$140.00) Paid for: Jones Skelton & Hochuli PLC - By Integrated Resource Systems IN
14. 27-Apr-2015 FILED: Case Management Statement (Appellant)
15. 1-Jul-2015 FILED: Motion to Extend Date for Opening Brief; Certificate of Service for Motion to Extend Date for Opening Brief (Appellant)
16. 2-Jul-2015 ORDERED: Motion to Extend Date for Opening Brief(Appellant) = GRANTED. Due date EXTENDED from Monday, 07-06-2015 to Wednesday, 08-05-2015. Melina Brill ProTem Judge - Author
17. 20-Jul-2015 FILED: Notice of Filing Trial Transcripts for October 8 and 9, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 8 and 9, 2014; Reporter's Transcript of Proceedings - 10/8/14 - Defense Opening Statements (Michelle Kaley) (unsigned); Reporter's Transcript of Proceedings - 10/9/14 - Cross-Exam of Dr. Bouzoukis (Michelle Kaley) (unsigned) (Appellant)
18. 20-Jul-2015 FILED: Notice of Filing Trial Transcripts for October 9 and 13, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 9 and 13, 2014; Reporter's Transcript of Proceedings - 10/9/14 - Cross-Exam of Dr. Wu (Michelle Kaley) (unsigned); Reporter's Transcript of Proceedings - 10/13/14 - Cross- Exam of Dr. Bouzolukis (Michelle Kaley) (unsigned) (Appellant)
19. 20-Jul-2015 FILED: Notice of Filing Trial Transcripts for October 13, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 13, 2014; Reporter's Transcript of Proceedings - 10/13/14 - Testimony of Nicholas Bosnak (Michelle Kaley) (unsigned); Reporter's Transcript of Proceedings - 10/13/14 - Oral Discussions (Michelle Kaley) (unsigned) (Appellant)
20. 20-Jul-2015 FILED: Notice of Filing Trial Transcripts for October 14 and 15, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 14 and 15, 2014; Reporter's Transcript of Proceedings - 10/14/14 (Michelle Kaley) (unsigned); Reporter's Transcript of Proceedings - 10/15/14 (Michelle Kaley) (unsigned) (Appellant)
21. 20-Jul-2015 FILED: Notice of Filing Trial Transcripts for October 22 and 23, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 22 and 23, 2014; Reporter's Transcript of Proceedings - 10/22/14 (Michelle Kaley) (unsigned); Reporter's Transcript of Proceedings - 10/23/14 (Michelle Kaley) (unsigned) (Appellant)
22. 20-Jul-2015 FILED: Motion to Add Trial Transcripts to Record on Appeal; Certificate of Service for Motion to Add Trial Transcripts to Record on Appeal (Appellant)
23. 5-Aug-2015 FILED: Opening Brief of Plaintiff-Appellant; Certificate of Compliance for Opening Brief of Plaintiff-Appellant; Certificate of Service for Opening Brief (Appellant)
24. 6-Aug-2015 FILED: Notice of Claim of Unconstitutionality; Certificate of Service for Notice of Claim of Unconstitutionality (Appellant)

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| 25. | 18-Aug-2015 | ORDERED: Motion to Add Trial Transcripts to Record on Appeal (Appellant) = DENIED w/o prejudice to reconsideration of a new motion to add transcripts if appellant submits transcripts that are properly certified. Melina Brill ProTem Judge - Author |
| 26. | 28-Aug-2015 | FILED: Motion to Add Certified Trial Transcripts to Record on Appeal; Certificate of Service for Motion to Add Certified Trial Transcripts to Record on Appeal (Appellant) |
| 27. | 28-Aug-2015 | FILED: Notice of Filing Certified Trial Transcripts for October 8 and 9, 2014; Certificate of Service for Notice of Filing Certified Trial Transcripts for October 8 and 9, 2014; Reporter's Transcript of Proceedings - 10/8/14 (Michele Kaley); Reporter's Transcript of Proceedings - 10/9/14 - Cross-Examination of Dr. Bouzoukis (Michele Kaley) (Appellant) |
| 28. | 28-Aug-2015 | FILED: Notice of Filing Certified Trial Transcripts for October 9 and 13, 2014; Certificate of Service for Notice of Filing Certified Trial Transcripts for October 9 and 13, 2014; Reporter's Transcript of Proceedings - 10/9/14 - Cross-Examination of Dr. Wu (Michele Kaley); Reporter's Transcript of Proceedings - 10/13/14 - Cross-Examination of Dr. Bouzoukis (Michele Kaley) (Appellant) |
| 29. | 28-Aug-2015 | FILED: Notice of Filing Certified Trial Transcripts for October 13, 2014; Certificate of Service for Notice of Filing Certified Trial Transcripts for October 13, 2014; Reporter's Transcript of Proceedings - 10/13/14 - Cross-Examination of Nicholas Bosnak (Michele Kaley); Reporter's Transcript of Proceedings - 10/13/14 - Oral Discussion (Michele Kaley) (Appellant) |
| 30. | 28-Aug-2015 | FILED: Notice of Filing Certified Trial Transcripts for October 14, and 15, 2014; Certificate of Service for Notice of Filing Certified Trial Transcripts for October 14 and 15, 2014; Reporter's Transcript of Proceedings - 10/14/14 - Cross-Examination of Dr. Lobatz (Michele Kaley); Reporter's Transcript of Proceedings - 10/15/14 - Cross-Examination of Dr. Robb (Michele Kaley) (Appellant) |
| 31. | 28-Aug-2015 | FILED: Notice of Filing Certified Trial Transcripts for October 22 and 23, 2014; Certificate of Service for Notice of Filing Trial Transcripts for October 22 and 23, 2014; Reporter's Transcript of Proceedings - 10/22/14 - Cross-Examination of Dr. Susan Borgaro (Michele Kaley); Reporter's Transcript of Proceedings - 10/23/14 - Closing Argument (Michele Kaley) (Appellant) |
| 32. | 3-Sep-2015 | FILED: Defendants-Appellees' Joint Motion for Extension of Time to File Answering Brief; Certificate of Service of Joint Motion for Extension of Time to File Answering Brief |
| 33. | 4-Sep-2015 | ORDERED: Motion for Extension of Time to File Answering Brief = GRANTED. Due date EXTENDED from Monday, 09-21-2015 to Wednesday, 10-21-2015. Absent compelling circumstances, no further extensions will be granted. Melina Brill ProTem Judge - Author |
| 34. | 30-Sep-2015 | ORDERED: Motion to Add Certified Trial Transcripts to Record on Appeal(Appellant) = GRANTED and supplementing record on appeal w/ following certified transcripts filed in this court on 8/28/15 (see order). Melina Brill ProTem Judge - Author |
| 35. | 20-Oct-2015 | FILED: Appellees' Joint Answering Brief; Certificate of Compliance for Appellees' Joint Answering Brief; Certificate of Service for Appellees' Joint Answering Brief |
| 36. | 20-Oct-2015 | FILED: Defendants-Appellees' Joint Motion for Leave to File Additional Trial Transcripts; Certificate of Service for Defendants-Appellees' Joint Motion for Leave to File Additional Trial Transcripts (Appellee) |
| 37. | 6-Nov-2015 | FILED: Plaintiff-Appellant's Response to Defendants-Appellees' Joint Motion for Leave to File Additional Trial Transcripts; Certificate of Service for Plaintiff-Appellant's Response to Defendants-Appellees' Joint Motion for Leave to File Additional Trial Transcripts (Appellant) |
| 38. | 16-Nov-2015 | FILED: Reply Brief of Plaintiff-Appellant; Certificate of Compliance for Reply Brief of Plaintiff-Appellant; Certificate of Service for Reply Brief of Plaintiff-Appellant |
| 39. | 30-Nov-2015 | ORDERED: Defendants-Appellees' Joint Motion for Leave to File Additional Trial Transcripts (Appellee) = GRANTED/certified transcripts shall be filed in this court on/before 12/11/15. Melina Brill ProTem Judge - Author |
| 40. | 4-Dec-2015 | FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days |
| 41. | 7-Dec-2015 | FILED: Defendants' Joint Supplemental Citation of Legal Authority; Certificate of Service (Appellee) |
| 42. | 8-Dec-2015 | ORDERED: Motion for Oral Argument (Appellant) = GRANTED. Hon Michael J Brown - Author |
| 43. | 9-Dec-2015 | FILED: Notice of Filing Trial Transcript for 10-21-2014; Certificate of Service for Notice of Filing Trial Transcript for 10-21-2014; Reporter's Transcript – 10/21/2014 - Trial (Michele Kaley) (Appellee) |

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44.	9-Dec-2015	FILED: Notice of Filing Trial Transcript for 10-22-2014; Certificate of Service for Notice of Filing Trial Transcript for 10-22-2014; Reporter's Transcript – 10/22/2014 - Trial (Michele Kaley) (Appellee)
45.	9-Dec-2015	FILED: Notice of Filing Trial Transcript for 10-14-2014; Certificate of Service for Notice of Filing Trial Transcript for 10-14-2014; Reporter's Transcript – 10/14/2014 - Trial (Michele Kaley) (Appellee)
46.	9-Dec-2015	FILED: Notice of Filing Trial Transcript for 10-23-2014; Certificate of Service for Notice of Filing Trial Transcript for 10-23-2014; Reporter's Transcript – 10/23/2014 - Trial (Michele Kaley) (Appellee)
47.	9-Dec-2015	FILED: Notice of Filing Trial Transcript for 10-20-2014; Certificate of Service for Notice of Filing Trial Transcript for 10-20-2014; Reporter's Transcript – 10/20/2014 - Trial (Michele Kaley) (Appellee)
48.	14-Dec-2015	FILED: Supplemented Superior Court e-Record with Revised Index of Record
49.	14-Dec-2015	FILED: Additional Record on Appeal: Exhibits: HD 4/27/12 - List and # 1 in manila envelope; HD 2/1/13 - List and # 1 in manila envelope; HD 10/2/14 - List and # 3 4 5 6 7 11 15 17 29 31 69 in manila envelope; HD 10/7/14 - List and # 1 2 3 4 6 8 13 14 15 16 18 62 75 76 79 82 89 96 100 116 124 125 126 156 162 163 164 165 166 167 173 16 178 190 191 in box.
50.	25-Jan-2016	FILED: Supplemental Citation of Legal Authority; Certificate of Service for Supplemental Citation for Legal Authority (Appellee)
51.	29-Mar-2016	FILED: Notice of Change of Firm Address; Certificate of Service (Appellee)
52.	7-Jul-2016	CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 9-20-16, 11:00 am, COURTROOM 1.
53.	8-Aug-2016	FILED: Notice of Oral Argument
54.	9-Aug-2016	FILED: Receipt for Notice of Oral Argument, Signed by Christopher Robbins on 08/08/2016 (Appellee Blanchard)
55.	10-Aug-2016	FILED: Receipt for Notice of Oral Argument, Signed by David L Abney on 08/08/2016; Certificate of Service (Appellant)
56.	24-Aug-2016	FILED: Receipt for Notice of Oral Argument, signed by Jonathan Paul Barnes Jr. on 08/08/2016; Certificate of Service (Appellee)
57.	21-Sep-2016	FILED: Supplemental Response to Questioning at Oral Argument; Certificate of Service for Supplemental Response to Questioning at Oral Argument (Appellee) (STRICKEN per order filed 09/22/2016)
58.	22-Sep-2016	ORDERED: striking the "Supplemental Response to Questioning at Oral Argument." Hon Patricia K Norris - Author
59.	28-Sep-2016	FILED: Sign-in Sheet/Case is Under Advisement as of 09/20/2016 (Dept B)
60.	25-Oct-2016	ORDERED: the Clerk's Office, by interlineation, shall amend the third page of the memorandum decision to add the short caption header, so that it reads as follows: Franklin v. Clemett et al. Hon Patricia K Norris - Author
61.	25-Oct-2016	MEMORANDUM DECISION (Affirmed) Hon Patricia K Norris - Author; Hon Samuel A Thumma - Concur; Hon Margaret H Downie - Concur
62.	25-Oct-2016	FILED: Memorandum Decision Distribution List
63.	25-Oct-2016	OPINION (Affirmed) Hon Patricia K Norris - Author; Hon Samuel A Thumma - Concur; Hon Margaret H Downie - Concur Amended Per Order Of 10-25-16
64.	25-Oct-2016	FILED: Opinion Distribution List
65.	31-Oct-2016	FILED: Statement of Costs; Certificate of Service (Appellee)
66.	31-Oct-2016	FILED: Appellee Blanchard's Statement of Costs; Certificate of Service for Appellee Blanchard's Statement of Costs (Appellee)
67.	23-Nov-2016	FILED: Email Notice from ASC re: Petition for Review filed 11/23/16; request for partial record
68.	23-Nov-2016	ORDERED: awarding Defendant/Appellee Jason John Clemett his costs in the amount of \$176.00. Amy M Wood - Author
69.	23-Nov-2016	ORDERED: awarding Defendant/Appellee Daniel Blanchard his costs in the amount of \$6,685.20. Amy M Wood - Author
70.	25-Nov-2016	FILED: Letter forwarding partial record to Arizona Supreme Court